IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2007

CORAM:

THE HON'BLE MR.JUSTICE M.CHOCKALINGAM

S.A.NO.1376 OF 1994

1.Dhandapani Asari
2.Dhanalakshmi ..... Appellants/defendants 1&2

Vs.

1.Adhilakshmi Ammal(died)
2.Govindammal
3.Mayakishna Asari
4.Natarajan(Given up)
5.Periyanayakam
6.Shantha
7.Sarala
8.Punchavarnam
9.Dhanakshimoorthy ...Respondents/Plaintiff & defendants 3 to 5

(Respondents 5 to 9 are brought on record as the legal representatives of the deceased 1st respondent vide order dated 11.6.1996 in CMP.No.8012 of 1995 by Dy.Rr.)

Second appeal filed u/s 100 of C.P.C against the Judgment and decree dated 29.10.1993 in A.S.No.36 of 1993 before the Additional Sub Court, Cuddalore against the judgment and decree dated 20.1.1993 in O.S.No.471 of 1985 on the file of the Principal District Munsif, Cuddalore.

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For Appellants: MR.Hema Sampath,Sr.Counsel
for Mr.R.Subramanian
For Respondents: Mr.R.Gururaj
5 to 9

Respondent-1 :died steps taken

Respondents 2&3: NA

Respondent 4 : given up

J U D G M E N T

Challenging the judgment of the learned Subordinate Judge, Cuddalore made in A.S.No.36 of 1993, defendants 1 and 2 whose defence plea has been rejected, have brought forth this Second appeal.

2. The short facts which lead the plaintiff to seek the relief of declaration and permanent injunction in respect of the suit properties are as follows:

The suit properties originally belonged to the first defendant who sold the same on 4.9.1969 for a consideration of Rs.200/-. It was a valid sale and in so far as the second item is concerned, it was mistakenly described. When it was questioned, the first defendant replied that there was no encumbrance over the same. Subsequently it was found that the property was mortgaged to one Subburaya Gounder and for redemption of the same, the plaintiff filed O.S.No.44 of 1978. Pending suit, Subburaya Gounder died and the first defendant was also added as second defendant and in so far as the second item of the property is concerned, compromise was entered on 26.11.1980 whereby survey number was corrected and the plaintiff was put in possession and thus both the properties are in possession of the plaintiff. Plaintiff has been paying kist for the first and second item of properties. While the matter stood thus, the defendants attempted to interfere with the possession of the properties with the plaintiff and also questioned the title. Under such circumstances, the suit has been filed.

3. The first defendant filed a written statement stating that the alleged sale deed dated 4.9.1968 was not genuine, but it was sham and nominal. In order to escape from the clutches of the creditors, the first defendant has executed such a sale deed. In so far as the second

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item is concerned, it was also not shown as one of the item of sale and thus the plaintiff cannot claim right over the second item of property. In so far as the second item of property is concerned, the first defendant was set exparte and hence it is not binding on the first defendant and apart from this, there was also a settlement deed executed by the owner of the property.

4. The second defendant filed a written statement stating that the property was originally belonged to one Mangalakshmi who executed a settlement deed wherein only the first defendant and his step brother Mayakrishnan were given life interest and after their lifetime, it should go to the heirs of those persons. Under such circumstances, Dhandapani,the first defendant has no right to execute the sale deed. Hence, the suit must be dismissed.

5. Necessary issues were framed and on trial, the trial Court originally decreed the suit. Aggrieved over the same, the first defendant took it on appeal in A.S.No.153 of 1989 and a remand order was passed on 6.2.1991 whereby a direction was given to the lower Court to go into the question whether the first defendant had competent to execute the sale deed and if to be so, to what extent it is binding. Again it was taken by the trial Court. Pending suit, the fourth and fifth defendant were added as party. The trial Court after giving sufficient opportunity to the parties found that the plaintiff is entitled for the relief asked for. Aggrieved defendants took it on appeal in A.S.No.36 of 1993 whereby the judgment of the trial Court was affirmed. Aggrieved defendants have brought forth this second appeal.

6. At the time of admission, the following substantial questions of law were formulated:

> 1. Whether the courts below are correct in overlooking the object of Section 15 of the Hindu Succession Act as per which the first appellant as well as Nallathambi were class one heirs of the deceased Mangammal entitled to get their respective shares?
>
> 2. Whether the Courts below are correct in holding that the plaintiff had proved his title to the suit property as a whole ignoring the dictum that no person could convey a right to another more than what he himself had?
>
> 3. Whether in law Courts below were correct in holding that mere admission on the part of defendants 4 and 5 that they had no interest in the suit property would convey absolute right to the first appellant?

7. Advancing his arguments on behalf of the appellants, learned counsel for the appellants would submit that the property originally belonged to one Valliammal who sold the property in the year 1931 in favour of the said Mangalakshmi. Mangalakshmi is the first wife of

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Nalla Thambi Achari. She sold the said property in favour of her husband Nalla Thambi Achari and Nalla Thambi Achari again sold the said property on 9.1.1952 in favour of Mangalakshmi under Ex.A15. She also executed the settlement deed under Ex.A16 on 11.10.1958 wherein it is clearly stated that Nallathambi had two wives. The first wife was Mangalakshmi and the second wife was Govindammal. Mangalakshmi had one son Dhandapani and Govindammal had one son Mayakrishnan, who are shown as 1st and 5th defendant in the suit. Mangalakshmi, while executing the settlement deed, which is marked as Ex.A16 has categorically stated that both Dhandapani and Mayakrishnan were given life interest in the property and after their lifetime, it should go to their heirs. Under such circumstances, the deed executed by Dhandapani DW1, would not bind on the parties. Apart from this, DW1 did not execute the deed in respect of second item of the property . The sale deed in Ex.A1 is in respect of 9 cents and the survey number is 31/4 and not 31/5. Even assuming that the contention put forth by the plaintiffs that the settlement was subsequently cancelled, since there was no reservation in the settlement deed under Ex.A15, it will not bind on them. Under those circumstances, there cannot be any revocation as found in Ex.A17. Added further the learned counsel, in the instant case, even assuming Ex.A1 deed is valid, it is valid only to the extent of share which fell into Dhandapani. Mangalakshmi died in the year 1963 leaving behind Dhandapani, the first defendant her son and her husband Nallathambi and the half share devolved on Nallathambi and half share devolved on Dhandapani . Nallathambi died intestate on 18.2.1970. His half share devolved upon Dhandapani 1/3, Govindammal, his second wife 1/3 and Mayakrishnan -1/3 his second son and therefore Dhandapani got 5/6 share. Thus, both the Courts below came to the conclusion that Ex.A1 sale deed is valid one and that would be to the extent of 5/6 share and only to that extent, declaration can be granted. But, in view of the finding that the sale deed is sham and nominal as put forth by the first defendant, the entire document will convey title to them. In so far as second item which would be the subject matter covered under sale deed, both the Courts below have not considered this aspect of the matter either on facts or law. Hence, the decree granted has got to be set aside by this Court.

8. Heard the learned counsel for the respondent on the above submissions. According to the learned counsel for the respondent, the sale deed which was executed under Ex.A1 is valid. It is not in controversy that the property originally belonged to Valliammal who sold the property to Mangalakshmi. The said Mangalakshmi sold the propery in Survey No.13 and on her death, it came to the hands of her husband Nallathambi and Dhandapani. In the instant case, on the death of Nalla Thambi, the husband of Mangalakshmi, the entire property would devolve upon Dhandapani who was competent to execute Ex.A1 sale deed. Learned counsel further add that the contention put forth by the appellant's side has been rightly rejected stating that settlement deed dated 11.1.1958 under Ex.A16 was revoked subsequently, though settlement executed did not come into force. After execution of settlement deed, Mangalakshmi executed a mortgage deed and in that mortgage deed also, the first defendant was added as party to the mortgage. Under such circumstances, it

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would be indicative of the fact that though settlement executed by Mangalakshmi did not come into force and it is an added fact that subsequently it was cancelled, entire property would devolve upon Dhandapani under Ex.A1 sale deed. Both the Courts below have rejected Ex.A1 and apart from this, the second item of property is concerned, suit was filed by the plaintiff and the first defendant was added as a party was correct. Both the Courts below denied declaration and also relief of consequential permanent injunction and hence the appeal has got to be dismissed.

9. After careful perusal on the rival submissions made, this Court is of the considered opinion that both the appeals do not merit acceptance whatsoever. It is not in controversy that the property originally belonged to Mangalakshmi, wife of Nalla Thambi and she purchased the property in the year 1931 under EX.A14 and she sold the same in favour of her husband Nalla Thambi and again he re-conveyed the property in favour of his wife on 9.1.1952 under Ex.A15. Thus, Mangalakshmi became the absolute owner of the property. Mangaslakshmi died in 1963. The first contention put forth by the defendant side was that Ex.A1 executed by the first defendant on 14.9.1968 was sham and nominal which has been rightly rejected by both the Courts below. Having executed the sale deed, without any material whatsoever, the first defendant came forward with the plea that in order to escape from the clutches of the creditors, he executed the sale deed. Inso far as the first item of the property is concerned, 9 cents of land was sold under Ex.A1 deed and in so far as the second item, there was a suit filed by the plaintiff in O.S.No.44 of 1978 wherein the contesting first defendant was also added as a party and now there was a compromise decree entered into wherein survey number was rectified as 31/5 and the plaintiff has been put in possession. Thus, in so far as Ex.A1 is concerned, both the items of properties have been actually conveyed by the first defendant. Now the question would arise whether the first defendant was competent enough to execute Ex.A1 sale deed. The fact that the property originally belonged to Mangalakshmi is not in controversy. Mangalakshmi died on 16.2.1963. The contention put forth by the defendant all along was that Mangalakshmi executed a settlement deed as found in Ex.A16 and under the settlement deed, she gave life interest to the first defendant Dhandapani and also Mayakrishnan who is shown as 5th defendant, the son of Nalla Thambi through his second wife Govindammal. It is indicative of the fact that settlement deed did not come into force till date and settlement deed executed on 11.1.1958 and subsequent to the cancellation of the settlement deed, there was revocation under Ex.A17. At this juncture it is to be pointed out that the first defendant who came forward to claim right under challenge, the suit in the settlement deed was also parted with his mother Mangalakshmi in executing mortgage deed in favour of third party wherein it has been clearly indicated that Mangalakshmi retained the property with her, despite settlement deed and the settlement deed have thus executed by Mangalakshmi did not come into force. Thus, the defence plea is that there was a settlement deed andas per the provision of the restoration of settlement deed the first defendant is not competent to execute the deed .

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Mangalakshmi died in the year 1963, leaving behind her husband Nallathambi and also Dhandapani, only son each entitled to 1/2 share. So far as Nallathambi is concerned, he died on 18.2.1970 leaving behind first defendant, as sole heir. Needless to say that Govindammal was shown as D4 and Mayakrishnan as D5, though added as party to the suit, they have also filed written statement stating that the sale deed in favour of the plaintiff bind on the first defendant as party and though the plaintiff was in possession of the property, in short, he did not claim any share. Apart from that by operation of law, neither the fourth defendant nor the firth defendant , son through the second wife of Nallathambi would lay claim over the suit property. The suit property entirely devolved upon the first defendant by operation of law who actually executed Ex.A16, settlement deed which covered under second item of the property which is the subject matter of the suit. Both the Courts below gone into the matter and marshaled the evidence properly and recorded a reasoned judgment which does not require any interference in the hands of this Court. The appeal is dismissed. No costs.

VJY

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
1.Additional Sub Court, Cuddalore
2.Principal District Munsif, Cuddalore.
3.The Section officer, V.R.Sectio High Court,Madras.
+1 cc to Mr.R.Gururaj, Advocate Sr.No.3711.
+1 cc to M/s.Hema Sampath, Advocate Sr.No.3482.

TEJ(CO)
dcp/23.3.07

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